



House of Representatives

File No. 815

General Assembly

January Session, 2007

(Reprint of File No. 240)

House Bill No. 5286
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 10, 2007

**AN ACT CONCERNING INSURANCE ON RESIDENTIAL
CONDOMINIUMS AND FLOOD INSURANCE FOR CONDOMINIUMS
LOCATED IN FLOOD HAZARD AREAS.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 47-83 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 The declarant and the association of unit owners, by its board of
4 directors, manager or other authorized agent shall, without prejudice
5 to the right of each unit owner to insure his own unit for his own
6 benefit, obtain for the condominium the following forms of insurance:
7 (1) A master policy affording fire, extended coverage and additional
8 perils in an amount sufficient for repair or replacement of the
9 buildings and improvements, or portions of the buildings and
10 improvements that in whole or in part comprise the common elements,
11 with reasonable deductibles and coinsurance clause as the board of
12 directors deems appropriate; and (2) a liability master policy, in an
13 amount specified by the condominium instruments, covering the unit
14 owners' association, the board of directors, the managing agent, if any,

15 all persons acting or who may come to act as agents or employees of
16 the foregoing, and all unit owners and other persons entitled to occupy
17 any unit or other portion of the condominium. The declarant and the
18 association, by its board of directors, the managing agent or other
19 authorized agent, [may] shall obtain such other policies as may be
20 required or authorized by the condominium instruments, or as the unit
21 owners may by vote direct, including, without limitation, workers'
22 compensation insurance, liability insurance on motor vehicles owned
23 by the association and nonowned and rented vehicles, officers' and
24 directors' indemnity policies, flood insurance in the event the
25 condominium is located in a flood hazard area, as defined and
26 determined by the National Flood Insurance Act, as amended (USC 42
27 Section 4101, P.L. 93-234), and specialized policies covering lands or
28 improvements in which the unit owners' association has or shares
29 ownership or other rights. When any policy or instrument has been
30 obtained by or on behalf of the declarant or the unit owners'
31 association, written notice thereof and of any subsequent changes in
32 values or limits therein or termination thereof shall be promptly
33 furnished to each unit owner. All insurance coverage obtained for the
34 condominium under this section shall be written in the name of the
35 association of unit owners, for the benefit of each of the unit owners
36 and their mortgagees as their interests may appear in the percentages
37 of their undivided interest in the common elements established in the
38 condominium instruments. [Premiums] To the extent required by the
39 condominium instruments, the cost of such insurance coverage shall
40 be assessed against the units in proportion to risk. Otherwise,
41 premiums shall be common expenses. Losses may be made payable to
42 a trustee for restoration or distribution for the benefit of such unit
43 owners and mortgagees as their interest may appear.

44 Sec. 2. Subsection (a) of section 47-84 of the general statutes is
45 repealed and the following is substituted in lieu thereof (*Effective*
46 *October 1, 2007*):

47 (a) Except as hereinafter provided, damage to or destruction of any
48 building or improvement located on the condominium parcel or

49 serving the condominium shall be promptly repaired and restored by
50 the declarant or the association, using the proceeds of insurance, if any,
51 on such building or improvement for that purpose and all costs for
52 repair or reconstruction in excess of available insurance proceeds,
53 regardless of whether such excess is the result of the application of a
54 deductible under insurance coverage, shall be a common expense.

55 Sec. 3. Section 47-255 of the general statutes is repealed and the
56 following is substituted in lieu thereof (*Effective October 1, 2007*):

57 (a) Commencing not later than the time of the first conveyance of a
58 unit to a person other than a declarant, the association shall maintain,
59 to the extent reasonably available: (1) Property insurance on the
60 common elements and, in a planned community, also on property that
61 must become common elements, insuring against all risks of direct
62 physical loss commonly insured against or, in the case of a conversion
63 building, against fire and extended coverage perils. The total amount
64 of insurance after application of any deductibles shall be not less than
65 eighty per cent of the actual cash value of the insured property at the
66 time the insurance is purchased and at each renewal date, exclusive of
67 land, excavations, foundations and other items normally excluded
68 from property policies; (2) flood insurance in the event the
69 condominium is located in a flood hazard area, as defined and
70 determined by the National Flood Insurance Act, as amended, USC 42
71 Section 4101, P.L. 93-234, and the unit owners by vote direct; and [(2)]
72 (3) liability insurance, including medical payments insurance, in an
73 amount determined by the executive board but not less than any
74 amount specified in the declaration, covering all occurrences
75 commonly insured against for death, bodily injury and property
76 damage arising out of or in connection with the use, ownership or
77 maintenance of the common elements and, in cooperatives, also of all
78 units.

79 (b) In the case of a building that is part of a cooperative or that
80 contains units having horizontal boundaries described in the
81 declaration, the insurance maintained under subdivision (1) of

82 subsection (a) of this section, to the extent reasonably available, shall
83 include the units, but need not include improvements and betterments
84 installed by unit owners.

85 (c) If the insurance described in subsections (a) and (b) of this
86 section is not reasonably available, the association promptly shall
87 cause notice of that fact to be hand-delivered or sent prepaid by United
88 States mail to all unit owners. The declaration may require the
89 association to carry any other insurance, and the association in any
90 event may carry any other insurance it considers appropriate to protect
91 the association or the unit owners.

92 (d) Insurance policies carried pursuant to subsections (a) and (b) of
93 this section shall provide that: (1) Each unit owner is an insured person
94 under the policy with respect to liability arising out of his interest in
95 the common elements or membership in the association; (2) the insurer
96 waives its right to subrogation under the policy against any unit owner
97 or member of his household; (3) no act or omission by any unit owner,
98 unless acting within the scope of his authority on behalf of the
99 association, will void the policy or be a condition to recovery under the
100 policy; and (4) if, at the time of a loss under the policy, there is other
101 insurance in the name of a unit owner covering the same risk covered
102 by the policy, the association's policy provides primary insurance.

103 (e) Any loss covered by the property policy under subdivision (1) of
104 subsection (a) and subsection (b) of this section shall be adjusted with
105 the association, but the insurance proceeds for that loss are payable to
106 any insurance trustee designated for that purpose, or otherwise to the
107 association, and not to any holder of a security interest. The insurance
108 trustee or the association shall hold any insurance proceeds in trust for
109 the association, unit owners and lien holders as their interests may
110 appear. Subject to the provisions of subsection (h) of this section, the
111 proceeds shall be disbursed first for the repair or restoration of the
112 damaged property, and the association, unit owners and lien holders
113 are not entitled to receive payment of any portion of the proceeds
114 unless there is a surplus of proceeds after the property has been

115 completely repaired or restored, or the common interest community is
116 terminated.

117 (f) An insurance policy issued to the association does not prevent a
118 unit owner from obtaining insurance for his own benefit.

119 (g) An insurer that has issued an insurance policy under this section
120 shall issue certificates or memoranda of insurance to the association
121 and, on written request, to any unit owner or holder of a security
122 interest. The insurer issuing the policy may not cancel or refuse to
123 renew it until sixty days after notice of the proposed cancellation or
124 nonrenewal has been mailed to the association, each unit owner and
125 each holder of a security interest to whom a certificate or
126 memorandum of insurance has been issued at their respective last
127 known addresses.

128 (h) (1) Any portion of the common interest community for which
129 insurance is required under this section which is damaged or
130 destroyed shall be repaired or replaced promptly by the association
131 unless (A) the common interest community is terminated, in which
132 case section 47-237 applies, (B) repair or replacement would be illegal
133 under any state or local statute or ordinance governing health or
134 safety, or (C) eighty per cent of the unit owners, including every owner
135 of a unit or assigned limited common element that will not be rebuilt,
136 vote not to rebuild. The cost of repair or replacement in excess of
137 insurance proceeds and reserves, regardless of whether such excess is
138 the result of the application of a deductible under insurance coverage,
139 is a common expense. (2) If the entire common interest community is
140 not repaired or replaced, (A) the insurance proceeds attributable to the
141 damaged common elements shall be used to restore the damaged area
142 to a condition compatible with the remainder of the common interest
143 community, and (B) except to the extent that other persons will be
144 distributees, (i) the insurance proceeds attributable to units and limited
145 common elements that are not rebuilt shall be distributed to the
146 owners of those units and the owners of the units to which those
147 limited common elements were allocated, or to lien holders, as their

148 interests may appear, and (ii) the remainder of the proceeds shall be
149 distributed to all the unit owners or lien holders, as their interests may
150 appear, in proportion to the common expense liabilities of all the units.
151 (3) If the unit owners vote not to rebuild any unit, that unit's allocated
152 interests are automatically reallocated on the vote as if the unit had
153 been condemned under subsection (a) of section 47-206, and the
154 association promptly shall prepare, execute and record an amendment
155 to the declaration reflecting the reallocations.

156 (i) The provisions of this section may be varied or waived in the
157 case of a common interest community all of whose units are restricted
158 to nonresidential use.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	47-83
Sec. 2	<i>October 1, 2007</i>	47-84(a)
Sec. 3	<i>October 1, 2007</i>	47-255

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill requires flood insurance for condominium communities located in flood zones and considers the deductible a common expense.

House "A" states that the cost of insurance coverage shall be assessed in proportion to risk and makes other changes which have no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**HB 5286 (as amended by House "A")******AN ACT CONCERNING INSURANCE ON RESIDENTIAL
CONDOMINIUMS AND FLOOD INSURANCE FOR CONDOMINIUMS
LOCATED IN FLOOD HAZARD AREAS.*****SUMMARY:**

For condominiums and other common interest communities governed by the Common Interest Ownership Act (CIOA), this bill requires the association of unit owners to maintain flood insurance if (1) the condominium, or other common interest community is located in a flood hazard area, as defined and determined by the National Flood Insurance Act and (2) the unit owners, by vote, require it (see BACKGROUND). By law, common expenses for these common interest communities include the cost of repairing and replacing any portion of the common interest community that exceeds the insurance proceeds from the insurance the association must provide by law. The bill specifies that common expenses also include any excess resulting from any applicable insurance deductible.

The bill imposes similar requirements for condominiums governed by the Condominium Act (see BACKGROUND). But for these condominiums, the requirement applies only if the condominium instruments or unit owners' vote requires it. The bill imposes this requirement on the association acting through its board of directors, managing agent, or other authorized agent. The law already requires them to provide other types of insurance, including specialized policies covering lands or improvements in which the unit owners' association has or shares ownership or other rights, if the condominium instruments or unit owners' vote requires it.

Under current law, premiums for insurance that the law requires

the condominium associations governed by the Condominium Act provide must be treated as common expenses. This bill allows the condominium instruments to instead assess the cost of such insurance coverage against the units in proportion to risk.

EFFECTIVE DATE: October 1, 2007

*House Amendment "A" removes a provision of the unamended bill that eliminates the CIOA requirement that certain insurance the association of unit owners maintains must cover the units, to the extent the insurance is reasonably available. Also it allows the condominium instruments of condominiums governed by the Condominium Act to assess the cost of insurance the law and bill require the association to provide against the units in proportion to risk.

BACKGROUND

CIOA, the Condominium Act, and the Unit Ownership Act

Three different sets of laws govern condominiums, depending on when they were created. CIOA governs the creation, alteration, management, termination, and sale of condominiums and other common interest communities formed in Connecticut after January 1, 1984 (CGS § 47-200 et seq.). The Condominium Act governs condominiums created from 1977 through 1983. (PA 76-308; CGS §§ 47-68a to 47-90c). Condominiums created before the Condominium Act was adopted are governed by the Unit Ownership Act (PA 1963, No. 605, July 10, 1963; CGS §§ 47-67 to 47-115 Revised to 1975).

Certain CIOA provisions automatically apply to condominiums created in Connecticut before January 1, 1984, but only with respect to events and circumstances that occur after December 31, 1983. The CIOA insurance provisions amended by this bill do not automatically apply to pre-CIOA condominiums (CGS § 47-216).

The law permits condominiums created before January 1, 1984, to amend their governing instruments (declaration, bylaws, survey, or

plans) to conform to portions of CIOA that do not automatically apply. Thus, a pre-CIOA condominium may adopt any of these CIOA provisions it wishes and does not have to adopt all of CIOA. Any amendment must be adopted in accordance with the law that applied when the condominium was created and with the procedures and requirements specified by the condominium's declaration and bylaws (CGS § 47-218).

Common Interest Community

"Common interest community" means real property described in a declaration on which a person, by virtue of his ownership of a unit, is obligated to make payments for (1) real property taxes, (2) insurance premiums, (3) maintenance, or (4) improvement of any other real property other than the unit described in the declaration (CGS § 47-202 (7)).

Related Law

For condominiums governed by CIOA, to the extent required by the declaration, associations must assess the costs of insurance in proportion to risk (CGS § 47-257 (c)).

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable

Yea 16 Nay 3 (03/13/2007)